BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GARY SLOTHOWER	)	
Claimant	)	
VS.	)	
	)	Docket No. 233,775
EXIDE CORPORATION	)	
Respondent	)	
AND	)	
	)	
ZURICH AMERICAN INSURANCE GROUP	)	
Insurance Carrier	)	

ORDER

Claimant appealed the December 29, 1999 Award entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument on June 14, 2000.

APPEARANCES

Patrik W. Neustrom of Salina, Kansas, appeared on behalf of claimant. John W. Mize of Salina, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

This is a claim for a March 22, 1998 accident followed by a series of accidents ending April 1, 1998. Claimant testified that on March 22, 1998 his back popped when he bent over to untie his shoes. He alleges that thereafter his back injury worsened as a result of his regular job duties as a truck driver for respondent.

After finding that claimant's back injury occurred in the course of employment but did not arise out of the employment, the Judge denied claimant workers compensation benefits.

Claimant contends the Judge erred. Claimant contends he suffered an aggravation to his preexisting back condition as a result of a work-related accident or series of

accidents and is, therefore, entitled to benefits. Conversely, respondent argues that the ALJ's decision should be affirmed.

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. Claimant is an over-the-road truck driver whose job duties included loading and unloading batteries. On March 22, 1998, claimant was injured when he bent down to untie his shoe.

2. Claimant has had a history of low back problems including a prior workers compensation claim for an injury in 1993. But between 1993 and up until about February of 1998, claimant had been able to do his regular work without experiencing any significant back problems. Following this incident, claimant underwent an MRI scan and was diagnosed as having a small herniated disc on the right side at the L4-5 intervertebral level. The prior left sided L4-5 disc herniation that had been diagnosed following a myelogram in 1993 was no longer visible in the 1998 study. In the opinion of board certified neurosurgeon Ali B. Manguoglu, M.D., the 1998 herniation on the right was a distinct and separate injury from the herniation to the left at L4-5 in 1993.

3. In his Award, the Administrative Law Judge sets out findings of fact in some detail. It is not necessary to repeat those findings here. The Board adopts those findings as its own.

CONCLUSIONS OF LAW

1. The Award should be affirmed.

2. Claimant sustained injury to his low back on March 22, 1998. The Administrative Law Judge found that there was an accident and that the accidental injury occurred in the course of claimant's employment with respondent.[1] No subsequent aggravation was proven. The Appeals Board agrees.

3. The Workers Compensation Act states that the term "accident" should be construed in a manner to effectuate the Act's primary purpose that employers bear the expense of work-related accidents. The Act provides:

> "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and **often, but not necessarily, accompanied by a manifestation of force**. The elements of an accident, as

[1] K.S.A. 44-501. *See also* Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

> stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate **the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment**.[2] (Emphasis added.)

4. The Appeals Board finds that claimant sustained trauma to the disc in his low back when he bent over to untie his shoelaces. That trauma was sufficient to herniate a disc in his low back. Therefore, he sustained an identifiable accident and the Boeckmann[3] case is distinguishable from this claim. Furthermore, the herniation was to a different part of the disc from the prior injury, even though it was at the same level. This distinguishes this claim from the personal risk analysis in Martin.[4]

5. An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[5] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[6]

6. Claimant wore shoes every day and every time he took them off, he had to bend over and untie the laces. The shoes were neither required nor provided by respondent. Untying one's shoes is not an activity that arises out of the nature, condition, obligations, or incidents of employment.

The Appeals Board finds, therefore, that claimant's accidental injury is not compensable because it did not arise out of the employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated December 29, 1999, entered by Administrative Law Judge Bruce E. Moore, should be, and is hereby, affirmed.

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[2] K.S.A. 44-508(d).

[3] Boeckmann v. Goodyear Tire & Rubber Co., 210 Kan. 733, 504 P.2d 625 (1972).

[4] Martin v. U.S.D. No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

[5] Brobst v. Brighton Place North, 24 Kan. App. 2d 766, 771, 955 P.2d 1315 (1997).

[6] Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 502, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

IT IS SO ORDERED.

Dated this ____ day of June 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrik W. Neustrom, Salina, KS
John W. Mize, Salina, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director